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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDREW J. IVORY, TODD E. KAPLINGER, AARON K. SHOOK, and DAVID M. STECHER

Appeal 2017-000605
Application 13/911,953
Technology Center 2100

Before JOSEPH L. DIXON, JAMES R. HUGHES, and ERIC S. FRAHM, *Administrative Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 1–14. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

The invention relates to optimizing the loading of a web page based on aggregated user preferences for the elements of the web page (Spec. ¶ 1). Specifically, the invention provides "a means for loading elements of a web page based on the relative priority of the elements of the web page thereby loading elements of interest prior to elements of non-interest" (Spec. ¶38). The relative priority of web page elements is determined by receiving indications of elements of interest from users who have requested and loaded the web page, and dynamically updating a list of the web page elements sorted based on popularity in accordance with the received indications (*see* Spec. ¶¶ 40–50). Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A computer program product embodied in a non-transitory computer readable storage medium for optimizing the loading of a web page, the computer program product comprising the programming instructions for:
>
> receiving indications of web page elements of interest of a web page from a plurality of client devices;
>
> updating a list of web page elements of said web page sorted in terms of popularity based on said received indications of web page elements of interest of said web page;
>
> receiving a request to retrieve said web page;

accessing said sorted list of web page elements of said web page; and

transmitting data to populate content of web page elements of said web page in an order based on said sorted list.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Wistendahl	US 5,708,845	Jan. 13, 1998
Suesserman	US 2005/0086344 A1	Apr. 21, 2005
Ehring	US 2005/0097008 A1	May 5, 2005
Lee	US 2009/0043732 A1	Feb. 12, 2009
Fisher	US 2009/0287824 A1	Nov. 19, 2009

James Burk, "Simplicity and JavaScript Modules" (Jan. 11, 2012)

REJECTIONS

The Examiner made the following rejections:

Claims 1, 2, 5, 8, 9, and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ehring and Lee.

Claims 3 and 10 stand rejected under 35 U.S.C. § 103(a) Ehring, Lee, and Suesserman.

Claims 4 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ehring, Lee, Suesserman, and Fisher.

Claims 6 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ehring, Lee, and Wistendahl.

Claims 7 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ehring, Lee, and Burk.

ANALYSIS

The Examiner finds the combination of Ehring and Lee discloses all the limitations of independent claim 1, including that Lee teaches "transmitting data to populate content of web page elements of said web page in an order based on said sorted list" (Final Act. 3–4). Appellants contend there is no "language in Lee that teaches transmitting data to populate content of web page elements of the web page **in an order** based on the sorted list" (App. Br. 12). We agree with Appellants.

Lee discloses a method for providing a search result list to a user, where the list is sorted according to "importance information" (Lee, ¶ 33). Lee further discloses the search results may be included in a web page (Lee, ¶ 51). In response to Appellants' arguments, the Examiner asserts:

> Lee discloses . . . transmitting for displaying a search result list information through a browser. As explained above, the web page elements are implied here. Regarding "in an order based on the sorted list"—that is supported by displaying a search result list in the browser because it is implied that the list would be displayed in the browser in the order it was sorted.

(Ans. 18). We interpret the Examiner's findings as mapping Lee's list of search results to the claimed "web page elements." However, even if we were to find Lee's search results—i.e., the "web page elements"—are transmitted to a client computer in the order of the sorted importance of the search results as part of the loading of a search result web page, the Examiner has not shown the order of search results is based on a pre-sorted list of web page elements, as in claim 1. That is, claim 1 requires first "updating a list of web page elements of said web page sorted in terms of popularity based on said received indications of web page elements of

interest of said web page," then "transmitting data to populate content of web page elements of said web page in an order based on said sorted list." In other words, the claimed transmission order is based on prior user feedback regarding the web page elements in the particular web page that comprises the web page elements. In Lee, the search result list web page is dynamically generated from a database based on a user's search query (*see* Lee, ¶¶ 72, 83), and is not a web page for which there is prior user feedback indicating the popularity of web page elements that are a part of that web page. Accordingly, we find the Examiner has not shown Lee teaches "transmitting data to populate content of web page elements of said web page in an order *based on said sorted list*."

We are, therefore, constrained by the record to find the Examiner erred in rejecting independent claim 1, independent claim 8, and dependent claims 2–7 and 9–14 for similar reasons.

CONCLUSION

The Examiner erred in rejecting claims 1–14 under 35 U.S.C. § 103(a).

DECISION

For the above reasons, the Examiner's rejections of claims 1–14 are reversed.

REVERSED